

The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN HENRY BROWNE and ALAN J.
WENOKUR, individually and on behalf of
others similarly situated,

Plaintiffs,

v.

AVVO, INC., MARK BRITTON, and JOHN
DOES 1-25,

Defendants.

No. CV7 920 RSL

DEFENDANTS' ANSWER AND
DEFENSES TO CLASS ACTION
COMPLAINT

Defendants Avvo, Inc. ("Avvo") and Mark Britton answer the Class Action Complaint
as follows:

1. Defendants admit that Avvo calls its lawyer ratings the "Avvo Rating."

Defendants deny the remaining allegations of Paragraph 1.

2. Defendants admit that the Avvo website targets consumers seeking lawyers
and states that it was "developed... for non-experts" with assistance from "thousands of
consumers," that a stated purpose of the site and the Avvo Rating is to help consumers "find
the right lawyer" and "make the murky process of comparing lawyers clearer," that lawyers
featured on the site do not pay to be included, that defendants will not delete attorney profiles
or ratings upon request, that Avvo CEO Mark Britton has written that the company's
"challenge" is to "bring[] together information for over 650,000 attorneys in one easily

1 searchable place,” and that the site debuted on June 5, 2007. Defendants deny the remaining
2 allegations of Paragraph 2.

3 3. Defendants admit the allegations of Paragraph 3.

4 4. Defendants admit Avvo rates lawyers in three categories: experience, industry
5 recognition, and professional conduct. Defendants admit trustworthiness, once a category on
6 the website, has since been removed, and that some attorneys are ranked in only two
7 categories, whereas others are ranked in three categories. Defendants deny the remaining
8 allegations of Paragraph 4.

9 5. Defendants admit the website characterizes the Avvo Rating as “unbiased,” as
10 showing “no favoritism,” and that according to the website, “[t]he Avvo Rating is our
11 assessment of how well a lawyer could handle your legal issue.” Defendants deny the
12 remaining allegations of Paragraph 5.

13 6. Defendants deny the allegations of Paragraph 6.

14 7. Defendants lack knowledge or information sufficient to form a belief as to the
15 truth of allegations regarding the referenced instances reported by the media and as to the
16 attorney who allegedly raised his rating by adding an athletic award, and therefore deny those
17 allegations. Defendants deny the remaining allegations of Paragraph 7.

18 8. Defendants deny the allegations of Paragraph 8.

19 9. Defendants deny the allegations of Paragraph 9.

20 10. Defendants admit that Avvo founder and CEO Mark Britton, who has been a
21 member of the Washington State Bar for nine years, had a higher rating (Avvo Rating 8 or
22 “Excellent”) than Dean of Stanford Law School Larry Kramer (Avvo Rating 5.7 or
23 “Average”) when plaintiffs filed the Complaint. Defendants lack knowledge and information
24 sufficient to form a belief as to the truth of the allegations regarding Ms. Stewart, and
25 therefore deny those allegations. Defendants deny the remaining allegations of Paragraph 10.

26 11. Defendants admit that Stanford ethics professor Deborah Rhode was rated 10
27 (“Superb”), that Seattle lawyer David Collins Clarke was rated 9.3 (“Superb”), that Mr.

1 Clarke had not claimed his profile, that Mr. Clarke had served as counsel to Avvo as it raised
2 private capital, that Avvo CEO and founder Mark Britton endorsed Mr. Clarke, that former
3 general counsel of Microsoft and president-elect of the American Bar Association William
4 Neukom was rated 7.5 (“Very Good”) in one profile and 8.9 (“Excellent”) in another profile,
5 and that one of Mr. Neukom’s rating’s was lower than that of Mr. Britton, at the time
6 plaintiffs filed the Complaint. Defendants deny the remaining allegations of Paragraph 11.

7 12. Defendants admit that Avvo CEO and founder Mark Britton has been quoted
8 as saying “We find the rating system to be working as designed” since the site’s June 5, 2007
9 debut. Defendants deny the remaining allegations of Paragraph 12.

10 13. Defendants deny the allegations of Paragraph 13.

11 14. Defendants lack knowledge or information sufficient to form a belief as to the
12 truth of the allegations of Paragraph 14, and therefore deny those allegations.

13 15. Defendants deny the allegations of Paragraph 15.

14 16. Defendants deny the allegations of Paragraph 16.

15 17. Defendants admit Avvo is a Washington corporation, that defendant Mark
16 Britton resides in Washington state, and that plaintiffs purport to seek relief exceeding
17 \$5,000,000. Defendants lack knowledge or information sufficient to form a belief as to the
18 allegation that the unnamed defendants reside in Washington, and therefore deny the
19 allegation. The remaining allegations of Paragraph 17 state legal conclusions to which no
20 response is required. Insofar as the remaining allegations of Paragraph 17 are factual,
21 defendants deny them.

22 18. The allegations of Paragraph 18 state legal conclusions to which no response is
23 required. Insofar as the allegations of Paragraph 18 are factual, defendants deny them.

24 19. Defendants admit the allegations of Paragraph 19.

25 20. Defendants lack information and knowledge sufficient to form a belief as to
26 the truth of the allegations of Paragraph 20, and therefore deny those allegations.

1 21. Defendants admit that when the Avvo site debuted on June 5, 2007, Avvo
2 assigned plaintiff John Henry Browne an Avvo Rating of 3.7 points on a ten-point scale, a
3 score that falls into the “Caution” category, that Mr. Browne contacted Avvo in writing and
4 asked Avvo to remove his name from its website, that Avvo did not remove his name from
5 the website, and that Mr. Browne’s experience rating was a 4 out of 5 at the time he filed the
6 Complaint. Defendants deny the remaining allegations of Paragraph 21.

7 22. Defendants deny the allegations of Paragraph 22.

8 23. Defendants deny the allegations of Paragraph 23.

9 24. Defendants lack knowledge or information sufficient to form a belief as to the
10 truth of the allegations of Paragraph 24, and therefore deny those allegations.

11 25. Defendants lack knowledge or information sufficient to form a belief as to the
12 truth of the allegations of Paragraph 25, and therefore deny those allegations.

13 26. Defendants admit that Avvo initially published a 6.5 or “Good” rating for
14 plaintiff Alan J. Wenokur, and that his experience rating was 3 out of 5 at the time he filed the
15 Complaint. Defendants deny the remaining allegations of Paragraph 26.

16 27. Defendants are without sufficient knowledge or information to form a belief as
17 to the truth of the allegations of Paragraph 27, and therefore deny those allegations.

18 28. Defendants lack knowledge or information sufficient to form a belief as to the
19 truth of the allegations of Paragraph 28, and therefore deny them.

20 29. Defendants admit the allegations of Paragraph 29.

21 30. Defendants admit the allegations of Paragraph 30.

22 31. Defendants deny the allegations of Paragraph 31.

23 32. Defendants admit the allegations of Paragraph 32.

24 33. Defendants admit that according to the website, “Avvo delivers the
25 information and guidance you need to help you make this important decision, even if you’ve
26 never worked with a lawyer before,” and that Avvo represents to consumers that the Avvo
27

1 Rating is an “assessment of how well a lawyer could handle your legal issue.” Defendants
2 deny the remaining allegations of Paragraph 33.

3 34. Defendants deny the allegations of Paragraph 34.

4 35. Defendants deny the allegations of Paragraph 35.

5 36. Defendants deny the allegations of Paragraph 36.

6 37. Defendants admit that Avvo’s rating system is reportedly “based on data we
7 have collected about hundreds of thousands of lawyers, including their number of years in
8 practice, disciplinary sanctions, and professional achievements,” that Avvo’s data comes from
9 multiple sources, including state bar associations, court records, lawyer websites, and
10 information lawyers provide to Avvo, and that Avvo does not search criminal records.
11 Defendants deny the remaining allegations of Paragraph 37.

12 38. Defendants admit the Avvo Rating is based on a mathematical model.
13 Defendants deny the remaining allegations of Paragraph 38.

14 39. Defendants admit that Avvo Customer Care wrote: “The Avvo rating is based
15 on publicly available information we could obtain about you; it reflects Avvo’s *judgment*
16 based on the available information. We recognize that there could be additional information,
17 not available publicly, which is relevant to your Avvo Rating.” Defendants deny the
18 remaining allegations of Paragraph 39.

19 40. Defendants lack information or knowledge sufficient to form a belief as to the
20 truth of the allegations in the last sentence of Paragraph 40, and therefore deny those
21 allegations. Defendants deny the remaining allegations of Paragraph 40.

22 41. Defendants deny the allegations of Paragraph 41.

23 42. Defendants deny the allegations of Paragraph 42.

24 43. Defendants admit that when a consumer goes to the site to seek a lawyer, he or
25 she can search by name or practice area or other coordinate and that the search will produce
26 names, ratings and profiles of individual attorneys. Defendants deny the remaining
27 allegations of Paragraph 43.

1 44. Defendants deny the allegations of Paragraph 44.

2 45. Defendants lack knowledge or information sufficient to form a belief as to the
3 truth of the allegations of Paragraph 45, and therefore deny those allegations.

4 46. Defendants deny the allegations of Paragraph 46.

5 47. Defendants admit the first two sentences of Paragraph 47 of the Complaint and
6 that plaintiff Browne was rated 5.2 at the time he filed the Complaint. Defendants are without
7 sufficient knowledge or information to form a belief as to the truth of the remaining
8 allegations of the Complaint, and therefore deny those allegations.

9 48. Defendants admit Stewart Macmillan Landefield works at Perkins Coie LLP,
10 that Perkins Coie LLP has served as counsel to Avvo, that Mr. Landefield and Mr. Taylor are
11 listed on the Perkins Coie website as partners, and that they are listed on the Washington State
12 Bar Association website as belonging to Perkins Coie. Defendants lack knowledge or
13 information sufficient to form a belief as to the truth of the remaining allegations of Paragraph
14 48, and therefore deny those allegations.

15 49. Defendants lack knowledge or information sufficient to form a belief as to the
16 truth of the allegations of Paragraph 49, and therefore deny those allegations.

17 50. Defendants deny the allegations of Paragraph 50.

18 51. Defendants deny the allegations of Paragraph 51.

19 52. Defendants deny the allegations of Paragraph 52.

20 53. Defendants deny the allegations of Paragraph 53.

21 54. Defendants admit the allegations of Paragraph 54.

22 55. Defendants admit Ms. Rhode was rated 10 and that Mr. Kramer was rated 5.7
23 at the time plaintiffs filed the Complaint, and that the indented quotation is accurate.
24 Defendants deny the remaining allegations of Paragraph 55.

25 56. Defendants deny the allegations of Paragraph 56.

26 57. Defendants lack knowledge or information sufficient to form a belief as to the
27 truth of the allegations of Paragraph 57, and therefore deny those allegations.

1 58. Defendants admit plaintiffs purport to bring a class action on behalf of
2 themselves and all members of the referenced class, pursuant to Fed. R. Civ. P. 23(b)(2) and
3 (b)(3).

4 59. Defendants admit plaintiffs purport to exclude from the purported class
5 employees, officers, directors, legal representatives, heirs, successors and assignees of Avvo.

6 60. Defendants admit Avvo's CEO and president, Mark Britton, has written that
7 Avvo seeks to gather and rate "over 650,000 attorneys in one easily searchable place."
8 Defendants lack sufficient knowledge or information to form a belief as to the truth of the
9 remaining allegations of Paragraph 60, and therefore deny those allegations.

10 61. Paragraph 61 states legal conclusions to which no response is required. Insofar
11 as the allegations of Paragraph 61 are factual, defendants deny them.

12 62. Paragraph 62 states legal conclusions to which no response is required. Insofar
13 as the allegations of Paragraph 62 are factual, defendants deny them.

14 63. Defendants lack information and knowledge sufficient to form a belief as to
15 the truth of the allegation that plaintiffs have retained able counsel with extensive experience
16 in class action litigation, and therefore deny that allegation. The remaining sentences of
17 Paragraph 63 states legal conclusions to which no response is required. Insofar as the
18 allegations of Paragraph 63 are factual, defendants deny them.

19 64. Paragraph 64 states legal conclusions to which no response is required. Insofar
20 as the allegations of Paragraph 64 are factual, defendants deny them.

21 65. Paragraph 65 states legal conclusions to which no response is required. Insofar
22 as the allegations of Paragraph 65 are factual, defendants deny them.

23 66. Paragraph 66 states legal conclusions to which no response is required. Insofar
24 as the allegations of Paragraph 66 are factual, defendants deny them.

25 67. Defendants incorporate in this paragraph all other paragraphs of this Answer.
26 Defendants admit plaintiff asserts this Count against both defendants.
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1 68. Paragraph 68 states legal conclusions to which no response is required. Insofar
2 as the allegations of Paragraph 68 are factual, defendants deny them.

3 69. Paragraph 69 states legal conclusions to which no response is required. Insofar
4 as the allegations of Paragraph 69 are factual, defendants deny them.

5 70. Paragraph 70 states legal conclusions to which no response is required. Insofar
6 as the allegations of Paragraph 70 are factual, defendants deny them.

7 71. Paragraph 71 states legal conclusions to which no response is required. Insofar
8 as the allegations of Paragraph 71 are factual, defendants deny them.

9 72. Paragraph 72 states legal conclusions to which no response is required. Insofar
10 as the allegations of Paragraph 72 are factual, defendants deny them.

11 73. Paragraph 73 states legal conclusions to which no response is required. Insofar
12 as the allegations of Paragraph 73 are factual, defendants deny them.

13 74. Paragraph 74 states legal conclusions to which no response is required. Insofar
14 as the allegations of Paragraph 74 are factual, defendants deny them.

15 75. Paragraph 75 states legal conclusions to which no response is required. Insofar
16 as the allegations of Paragraph 75 are factual, defendants deny them.

17 76. Defendants incorporate in this paragraph all other paragraphs of this Answer.

18 77. Paragraph 77 states legal conclusions to which no response is required. Insofar
19 as the allegations of Paragraph 77 are factual, defendants deny them.

20 78. Paragraph 78 states a legal conclusion to which no response is required.
21 Insofar as the allegation of Paragraph 78 is factual, defendants deny it.

22 79. Paragraph 79 states legal conclusions to which no response is required. Insofar
23 as the allegations of Paragraph 79 are factual, defendants deny them.

24 80. Paragraph 80 states legal conclusions to which no response is required. Insofar
25 as the allegations of Paragraph 80 are factual, defendants deny them.

26 81. Paragraph 81 states legal conclusions to which no response is required. Insofar
27 as the allegations of Paragraph 81 are factual, defendants deny them.

1 82. Paragraph 82 states legal conclusions to which no response is required. Insofar
2 as the allegations of Paragraph 82 are factual, defendants deny them.

3 83. Defendants deny the allegations of Paragraph 83.

4 84. Defendants lack sufficient knowledge or information to form a belief as to the
5 truth of the allegations of paragraph 84, and therefore deny those allegations.

6 85. Paragraph 81 states legal conclusions to which no response is required. Insofar
7 as the allegations of Paragraph 81 are factual, defendants deny them.

8 **AFFIRMATIVE AND OTHER DEFENSES**

9 86. Plaintiffs' claims are barred by the First Amendment to the United States
10 Constitution and by Article I, Section 5, of the Washington State Constitution.

11 87. Plaintiffs' claims are barred because they fail to state a claim upon which relief
12 can be granted.

13 88. Plaintiffs' claims are barred because defendants act to preserve and expand
14 competition, and are thus protected under the Washington Consumer Protection Act.

15 89. Plaintiffs' claims are barred by lack of standing.

16 **PRAYER FOR RELIEF**

17 Wherefore, defendants respectfully request this Court to grant relief as follows:

18 1. Dismissal of plaintiffs' claims with prejudice;

19 2. An award of its reasonable attorneys' fees and costs incurred in the defense of
20 this matter, in accordance with RCW 4.84.185, 28 U.S.C. § 1927, and other applicable rules
21 and statutes; and

22 3. Such other and further relief as this Court may deem proper.
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1 DATED this 28th day of June, 2007.

2 Davis Wright Tremaine LLP
3 Attorneys for Defendants Avvo, Inc., and
4 Mark Britton

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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